



Livestock Facility Siting Newsletter Release

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MAKING THE TRANSITION: CUPS UNDER THE SITING LAW

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On May 1, 2006, the Livestock Facility Siting Law became effective. This has important implications for local governments that require conditional use permits (CUPs) for new and expanding livestock facilities. Most significantly, these local governments must issue CUPs consistent with the requirements of the siting law. Generally, this means that local governments cannot apply the CUP standards and other requirements in their current zoning ordinances to permit applications filed after May 1st.

Until November 1, 2006, these local governments can issue CUPs for livestock facilities without amending their ordinances as long as they follow the requirements of the siting law. The siting rule found at ATCP 51 in the Wisconsin Administrative Code (ATCP 51) creates this grace period to implement the siting law, but does not specify what actions local governments should take to signify their intent to implement the siting law requirements. While some local governments have adopted resolutions to indicate their intent, officials should obtain legal advice about the appropriate steps they must follow. However a local government approaches the issue, they should take positive action so that farmers know the requirements they must meet to expand livestock operations.

By November 1st, local governments must amend their zoning ordinances to incorporate the siting law requirements if they intend to continue to issue CUPs. If they do not make changes in time, they will be unable to use their existing ordinances to issue permits for livestock operations. Local governments need to start now on their ordinance revisions to make this deadline. If you do not make the deadline, you may lose certain rights including your ability to use a permit threshold lower than 500 animal units.

During the transition period for the new law, local governments also face other issues related to regulation of livestock facilities using conditional permits. The remainder of this article shares answers to some questions frequently asked by local governments.

Q1. Can a local government issue conditional use permits using less stringent standards than those found in ATCP 51 during the interim period between May 1 – November 1? In other words, if we already have a local ordinance in place before the effective date of ATCP 51, can we apply the standards from the ordinance during the interim period or do we have to use the standards in ATCP 51?

A1. If a local government requires local approval of livestock facilities, it must grant or deny approval based on the standards in ATCP 51 – it may not apply less stringent standards. A local government may



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apply ATCP 51 standards without explicitly incorporating those standards in the local ordinance until November 1, 2006.

Q2. What if we adopted a local ordinance before May 1, 2006 and it contains standards more stringent than ATCP 51? Can that ordinance be applied during the interim period?

A2. A local government may not apply more stringent standards unless it has complied with the requirements of ATCP 51. Among other things, it must enact these more stringent standards based on reasonable and scientifically defensible findings of fact adopted by the local governing body. The findings must clearly show that the more stringent standards are needed to protect public health or safety. If a local government denies a siting application based on the more stringent standards, the permit applicant may ask the state Livestock Facility Siting Review Board to review whether the local government met the criteria for applying those standards.

Q3. We adopted a zoning ordinance two years ago that requires approval for facilities with 600 or more animal units. What happens if on August 1, 2006, an individual wants to construct a new livestock facility with 550 animal units? Must we use the 500 animal unit threshold referenced in the siting law or can we use the one in our ordinance?

A3. A local government can use the threshold in its ordinance as long as it meets the requirements in the siting law. Under the siting law, a local government may not set a threshold lower than 500 animal units unless that threshold existed in the ordinance, prior to July 19, 2003. A local government may choose a threshold over 500 animal units if it wishes to do so.

If an existing ordinance has a threshold of 600 animal units, that threshold remains in effect until the local government changes its ordinance. As long as the local permit threshold remains at 600 animal units, no local approval is required for a 550 animal unit facility.

Q4. Some time before May 1, 2006, our zoning department issued a livestock operator a conditional use permit for 350 animal units. Again before May 1st, the livestock operator increased the animal units on his farm to 900 without obtaining a new CUP. What can the local government do now about this violation of the permit?

A4. The local government cannot treat the operator the same as a livestock facility that expands to 900 animal units after May 1, 2006. For expansions occurring after May 1st, the local government may require the operator to obtain approval under siting law (if the expansion meets the criteria in the siting rule, ATCP 51). For permit violations prior to May 1st, the local government may take appropriate action under local law to penalize or enjoin the violation. In settlement of such an enforcement action, the local government could agree to consider an after-the-fact application, under ATCP 51, to approve the 900 animal unit operation. This settlement would be in lieu of an order requiring the operator to conform to the existing 350 animal unit permit limit.

Q5. Assume the same facts as Question 4, except the original permit does not set a maximum number of animal units as a part of the permit. What can the local government do about an expansion to 900 animal units before May 1st.



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A5. Even if the existing permit did not explicitly set a maximum number of animal units, a maximum number may be implied based on the number of animals that the approved livestock facility was reasonably designed to house. If this can be done, then the answer to the question is the same as A4. If a maximum number cannot be implied under the provisions of the siting law, the operation is not in violation of its original permit, and no further local permit requirements can be imposed until the number of animal units exceeds 900 (the number on May 1) plus 20%.

Q6. In 1996, a livestock operator has 300 animal units but does not obtain a conditional use permit as required by our local zoning ordinance. The operator expands the number of animal units to 800 units prior to May 1, 2006. What can the local government do if the operator does not obtain a permit for latest expansion?

A6. This is resolved the same way issues were addressed in A4. The local government cannot demand that the facility apply for a permit under the new siting law, because the law does not apply to expansions prior to May 1, 2006. However, the local government may take appropriate action under local law to enforce a violation of its ordinance. As previously stated, the local government could agree as part of a settlement to consider an after-the-fact application, under ATCP 51, to approve the facility for 900 animal units.

Q7. Changing the facts from Q6, what if the operator had 300 animal units prior to 1996. No permit was required because the operation was grandfathered into our existing ordinance. The operator expands to 800 animal units prior to May 1, 2006? What recourse does the local government have?

A7. Again the local government must pursue any violations of its ordinance rather than first requiring that the facility obtain a permit based on the new siting law. If the prior expansion violated the terms under which the livestock facility was "grandfathered," the local government may take appropriate action under local law to penalize or enjoin that violation and may use the settlement option discussed in prior answers.

It is important to understand the options that local governments have when making the transition from existing CUP requirements in their local ordinances to CUP requirements that are based upon the standards found in the siting rule (ATCP 51). The six month interim period between May 1 and November 1, 2006 is designed to provide local governments with time to work through their options and to update their ordinances to include the standards found in the siting rule.

For more information about livestock facility siting and upcoming events and presentations, please visit <http://livestocksiting.wi.gov>.